

7/14/97

Robert Hathaway tells Memphis court that markings from newly test-fired bullet differ from those on bullet that killed King in 1968.



BY JOHN L. FOGHT—ASSOCIATED PRESS

Ballistic Tests on Ray Rifle Show Inconsistencies, Expert Testifies

Judge Reviewing King Killing Wants to See FBI Records

By Roberto Suro
Washington Post Staff Writer

Bullets recently test fired from the rifle belonging to James Earl Ray bore markings unlike those found on the bullet that killed Martin Luther King Jr. in 1968, according to a ballistics expert who testified yesterday in a Tennessee court hearing.

Ray, serving a 99-year sentence for King's assassination, is seeking a trial based in part on claims that technology unavailable at the time of the killing will show that his rifle was not used in the killing. But the test results announced yesterday were inconclusive on this point.

Robert Hathaway, the ballistics expert hired by Ray's lawyers to conduct the tests, testified that build-up of materials in the rifle barrel over the past 30 years might be responsible for some of the differences between the test slugs and the bullet that killed King. But even removing those materials or "plating" would not guarantee a test that recreated the condition of the rifle in 1968, Hathaway said.

The .30-06 Remington hunting rifle, which Ray admits owning and which was found bearing his fingerprints near the assassination scene in Memphis, has been test fired twice before. The slugs in 1968 by the FBI and in 1978 by experts working for a congressional investigating committee, like the one conducted this year, failed to reach a conclusion as to whether the bullet that killed King was fired from Ray's rifle.

Ray's conviction has been upheld eight times in state and federal courts without reliance on forensic evidence that his gun was used to kill King. The House Select Committee on Assassina-

tions similarly concluded in 1979 that Ray killed King but also found circumstantial evidence indicating that he acted as part of a conspiracy.

Ray, who pleaded guilty to the King assassination to avoid the death penalty but then recanted, has said he was framed for the murder.

Shelby County Court Judge Joe Brown yesterday ordered defense attorneys and prosecutors to ask the FBI to unseal the results of the forensic examination of Ray's rifles which they conducted shortly after King was killed. Hathaway and other experts have argued that using an electron microscope and other current technology to compare the 1968 test bullets and the one that was used to kill King might produce conclusive results not available to past examiners.

Clearly intrigued by that possibility, Brown said, "the court thinks, amongst other things, that justice might be served if we were able to examine those bullets and the court feels that the state of Tennessee has a claim on that evidence that pertains to this case," according to the Reuters news agency.

An FBI spokesman said the bureau had no immediate comment on yesterday's proceedings.

Ray, 69, is dying of liver disease and a recent court ruling has made it unlikely that he can receive an organ transplant. "Ray is in the same position he was in a year ago, or 20 years ago," John Campbell, the prosecutor in the case, said after the hearing. "The only way he can get back in the courtroom is by finding something that excludes his rifle and there has been no change on that score."